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EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/560,218

**Applicant(s)**

CHIRNOMAS, MUNROE

**Examiner**

Michael C. Giggins

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 09 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 1/4/06, 12/9/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 1-12 in the reply filed on 5/5/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Regarding claims 1-12, the phrases "like" and "related" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehmacher (US 4128049).

In claim 1 the phrase "for containing food related items therein" and carries little to no patentable weight because the intended use does not result in any structural difference between the claimed invention and the prior art.

Lehmacher discloses a separable package comprising a pouch having opposed ends and first and second sheet-like barrier member positioned one on top of another for forming said pouch therebetween, a portion of said first and second sheet-like barrier members (since synthetic thermoplastics are barriers) including a separation structure functioning to allow said pouch to separate into at least two pieces when said separation structure is activated (column 1, lines 10-29, column 2, lines 8-11, column 6, line 14 through column 8, line 68 and Figs. 1, 13, 15, 20-28).

Lehmacher also discloses a separation structure built into the first and second sheets so said pouch separates into at least two portions (column 1, lines 10-29, column 2, lines 8-11, column 6, line 14 through column 8, line 68 and Figs. 1, 13, 15, 20-28) (applies to claims 8-10).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-7 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehmacher (US 4128049) in view of Saad et al. (US 5804265).

Lehmacher discloses wherein said separation structure comprises a portion of said pouch that is used to join said first and second sheet-like barrier members together (column 1, lines 10-29, column 2, lines 8-11, column 6, line 14 through column 8, line 68 and Figs. 1, 13, 15, 20-28) (applies to instant claim 12).

Lehmacher fails to disclose further including additional sheet-like barrier members positioned therein for creating separation zones for holding food related items, wherein at least addition sheet extend inside the pouch from one towards the other and folds back on itself.

Saad discloses disclose further including additional sheet-like barrier members positioned therein for creating separation zones for holding food related items, wherein at least addition sheet extend inside the pouch from one towards the other and folds back on itself (Fig. 6B, column 5, lines 28-59) in a bag or pouch in order to improve storage of meat products (column 1, lines 9-65).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided further including additional sheet-like barrier members positioned therein for creating separation zones for holding food related items, wherein at least addition sheet extend inside the pouch from one towards the other and folds back on itself in the package of Lehmacher in order to provide improved storage of meat products as taught or suggested by Saad.

With regard to claims 3 and 7 the claimed structure is obtained upon the combination since Lehmacher discloses the separation structure and Saad discloses the additional sheets. It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the limitations of claims 3 and 7 in order to provide improved storage capability.

Claim 11, in its entirety, recites apparatus limitation in a product claim which have been given little to no patentable weight since apparatus limitations are not germane to the patentability of a product in a product claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/  
Primary Examiner, Art Unit 1794

MCM  
June 8, 2009